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14 BLACKHAWK MANUFACTURING, INC.

15 UNITED STATES DISTRICT COURT  
16 CENTRAL DISTRICT OF CALIFORNIA

17 FEDEX GROUND PACKAGE  
18 SYSTEM, INC., a Delaware  
Corporation,

19 Plaintiff,

20 vs.

21 BLACKHAWK MANUFACTURING,  
22 INC., a California Corporation,,

23 Defendant.

Case No. CV11-06893-ODW(OPx)

**STIPULATED PROTECTIVE  
ORDER**

DISCOVERY MATTER

Crtrm: 11  
Judge: Hon. Otis D. Wright II  
Magistrate Judge: Hon. Oswald  
Parada

1 The following Protective Order is hereby stipulated to by and between  
 2 Plaintiff FedEx Ground Package System, Inc. ("FedEx Ground") and Defendant  
 3 Blackhawk Manufacturing, Inc. ("Blackhawk").

4 WHEREAS, the parties anticipate that discovery in the above-entitled action  
 5 will encompass sensitive, confidential or proprietary information and documents  
 6 that are sensitive, confidential or proprietary in nature;

7 WHEREAS, in the absence of a protective order, the parties' sensitive,  
 8 confidential or proprietary information may be subject to disclosure in this  
 9 litigation to the parties' detriment;

10 WHEREAS, the parties' exchange of documents and information will be  
 11 facilitated by the Court entering this Protective Order;

12 **NOW, THEREFORE, IT IS HEREBY ORDERED THAT:**

13 1. This Protective Order shall govern all documents, discovery materials,  
 14 or any designated record of information produced in this action, including all  
 15 designated deposition testimony, all designated testimony taken at a hearing or  
 16 other proceeding, interrogatory answers, documents, and other discovery materials  
 17 (whether produced informally or in response to interrogatories, requests for  
 18 admissions, requests for production of documents, or other formal method of  
 19 discovery) produced within the context of this action.

20 2. Either party hereto may designate information as "CONFIDENTIAL,"  
 21 pursuant to the terms of this Protective Order, if that party in good faith believes  
 22 that such information constitutes, contains or reflects proprietary or commercially  
 23 sensitive information. All information, including without limitation all copies,  
 24 excerpts, analyses, reports, notes or summaries based upon or derived from any  
 25 information that has been designated as CONFIDENTIAL, shall be considered to  
 26 be CONFIDENTIAL.

27 3. CONFIDENTIAL information or items shall mean any information  
 28 that the designating party in good faith believes is properly protected under Fed. R.

1 Civ. P. 26(c), and which is properly designated as “CONFIDENTIAL” according to  
2 the procedures set forth in Paragraph 5 of this Protective Order.

3 4. Documents and information designated as CONFIDENTIAL shall  
4 include: (a) all copies, extracts, and complete or partial summaries prepared from  
5 such documents or information; (b) portions of deposition transcripts and exhibits  
6 that contain or reflect the content of any such documents, copies, extracts, or  
7 summaries; (c) portions of briefs, memoranda, or any other writing filed with the  
8 Court and exhibits that contain or reflect the content of any such documents, copies,  
9 extracts, or summaries, and (d) deposition testimony.

10 5. After the date of this Protective Order, to designate any information or  
11 documents as CONFIDENTIAL, such that the information or documents are  
12 protected under this Protective Order, either party shall:

13 (a) In the case of documents, mark such document, or portions of  
14 such document, “CONFIDENTIAL” at or prior to the time it is produced or  
15 otherwise made available by one party hereto to the other party hereto, or as soon as  
16 is practicable thereafter.

17 (b) In the case of responses to particular interrogatories, requests for  
18 admissions or requests for production of documents made after the date of this  
19 Protective Order, any CONFIDENTIAL material in such responses shall be set  
20 forth in a separate document containing a statement to the effect that “THIS  
21 RESPONSE CONTAINS CONFIDENTIAL MATERIAL,” and the legend  
22 “CONFIDENTIAL, SUBJECT TO COURT ORDER,” shall be placed on each  
23 page of any such set of responses. CONFIDENTIAL portions of such responses  
24 made prior to the date of this Protective Order may be designated as  
25 CONFIDENTIAL.

26 6. All information, including without limitation all documents,  
27 designated as CONFIDENTIAL shall be used solely in this action, and not be  
28 disclosed in any manner to anyone other than the following:

1 (a) counsel (including in-house counsel) who are actively engaged  
 2 in the prosecution or defense of this action; the employees or agents of such counsel  
 3 assisting in the conduct of this action; the parties to the action; and, where  
 4 necessary, partners, employees, or agents of parties to the action;

5 (b) bona fide experts assisting counsel in the prosecution or defense  
 6 of this action, whether categorized as “testifying” or “consulting,” whom the  
 7 attorneys represent have been specifically instructed not to discuss or disclose  
 8 information that has been designated CONFIDENTIAL other than with counsel of  
 9 record;

10 (c) witnesses and their counsel in this action where deemed  
 11 necessary by counsel to assist in the prosecution or defense of this action;

12 (d) the Court;

13 (e) court reporters, court personnel, interpreters, translators, copy  
 14 services, graphic support services, document imaging services, and database/coding  
 15 services retained by counsel; and

16 (f) other persons only in accordance with paragraph 9 of this  
 17 Protective Order.

18 7. Each person to whom information designated as CONFIDENTIAL is  
 19 disclosed, and who are signatories to the Protective Order or have executed a Non-  
 20 Disclosure Certificate (Exhibit A), shall be bound by the terms of this Protective  
 21 Order.

22 8. Prior to disclosure of any information designated as CONFIDENTIAL  
 23 under this Protective Order, each person to whom such information is to be  
 24 disclosed (excluding the Court, court personnel, counsel of record and legal  
 25 assistants, in-house counsel, or other law firm or law department employees  
 26 working under their supervision in this action), shall agree to be bound by the terms  
 27 of this Protective Order, and consent to be subject to the personal jurisdiction of the  
 28 United States District Court for the Central District of California for any proceeding

1 relating to enforcement of this Protective Order by executing the form attached  
2 hereto as Exhibit "A." Counsel shall maintain all such executed forms on file  
3 throughout the pendency of this action.

4 9. In the event that counsel for either party determines that this action  
5 requires that any CONFIDENTIAL DOCUMENTS or information be disclosed to  
6 persons not otherwise authorized herein, such counsel shall provide counsel for the  
7 party that produced or otherwise made available such information written notice of  
8 the intended disclosure (which notice shall specify with particularity the  
9 information to be disclosed and the identity, including name, title and employer, of  
10 the otherwise unauthorized person) not less than ten (10) calendar days prior to  
11 disclosure, or such shorter period as is agreeable to the party that produced such  
12 material. If within four (4) calendar days of receipt of such notice, counsel for the  
13 party that produced or otherwise made available such information objects in writing  
14 via facsimile or e-mail to such disclosure to the counsel giving notice, the  
15 information shall not be disclosed unless the Court so orders. The party seeking  
16 disclosure of the CONFIDENTIAL documents must seek the necessary relief from  
17 the Court.

18 10. Each person to whom any information subject to this Protective Order  
19 is disclosed, and who is a signatory to the Stipulation for Protective Order or who  
20 has executed a Non-Disclosure Certificate, is hereby prohibited from divulging  
21 such materials or any information contained therein or from exploiting in any way  
22 such material or information for his or her own economic benefit or business  
23 purposes.

24 11. If, for any reason, any CONFIDENTIAL documents are to be filed  
25 with the Court, such documents shall be filed in accordance with Central District  
26 Local Rules 79-5.1 through 79-5.4. At the conclusion of this case, any materials  
27 filed with the Court under seal shall be kept under seal or be returned for  
28 disposition as provided in Paragraph 14.

1           12. If any party wishes to challenge the designation of any information,  
2 document or discovery response designated as CONFIDENTIAL, it shall meet and  
3 confer with the designating party to resolve the dispute pursuant to Central District  
4 Local Rule 37-1. If the parties are unable to resolve the dispute, the parties shall  
5 file a written joint stipulation containing all issues in dispute, which will be  
6 prepared in conformity with Central District Local Rules 37-2.1 and 37-2.2. The  
7 moving party may then move for a determination as to whether the document or  
8 other information in question warrants protection as a CONFIDENTIAL matter.  
9 The moving party's stipulation or declaration describing how the opposing party  
10 failed to cooperate in formulating the stipulation must be timely filed pursuant to  
11 Central District Local Rule 37-2.4. Nothing in this Protective Order affects or  
12 alters the burden on the designating party to establish the propriety of confidential  
13 treatment for any information or document designated as CONFIDENTIAL.

14           13. This Protective Order shall have no effect on any information or  
15 documents already lawfully in the possession of either party.

16           14. Within sixty (60) days after final disposition of this action, the parties  
17 and all signatories to the Non-Disclosure Certificate shall destroy or return to the  
18 person producing the material all documents designated as CONFIDENTIAL, and  
19 all copies thereof, including excerpts and extracts (excluding excerpts or extracts  
20 incorporated into any privileged memoranda), except for such material which has  
21 become part of the record in the action. The parties must certify the destruction of  
22 CONFIDENTIAL material in writing. The Court will retain jurisdiction to enforce  
23 compliance with this provision.

24           15. The inadvertent or unintentional disclosure of documents containing  
25 CONFIDENTIAL information, regardless of whether the documents or information  
26 was so designated at the time of disclosure, shall not be deemed a waiver, in whole  
27 or in part, of a party's claim of confidentiality, either as to the specific information  
28 disclosed therein or as to any other information thereto or on the same or related


1 subject matter.

2 16. Nothing contained herein shall be constructed as limiting or negating  
3 the right of any party hereto to bring a motion to compel discovery, for a protective  
4 order, or, upon a showing of good cause, to modify the provisions of this Protective  
5 Order.

6 17. In the event a party is served with a validly issued subpoena from a  
7 third party requesting disclosure of CONFIDENTIAL information or material, that  
8 party shall immediately notify the party that designated such material as  
9 CONFIDENTIAL, and prior to disclosure of any CONFIDENTIAL information or  
10 documents, shall allow the designating party sufficient time to object to or move to  
11 quash the subpoena.

12 **IT IS SO ORDERED.**

13  
14  
15 Dated: 5/23/12

16 By   
17 Hon. Oswald Parada, U.S. Magistrate Judge  
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**EXHIBIT A****NON-DISCLOSURE CERTIFICATE**

I hereby certify my understanding that access to confidential material in this action is provided to me pursuant to the terms and restrictions of the Protective Order approved by The Honorable Otis D. Wright II, District Judge, in the action captioned *FedEx Ground Package System, Inc. v. Blackhawk Manufacturing, Inc.*, United States District Court for the Central District of California, Case No. CV11-06983-ODW(OPx). I have been given a copy of and have read the Protective Order, and I agree to be bound by it. Without limiting the terms of the Protective Order, I specifically understand that confidential material and any information contained in confidential material shall not be used or disclosed to anyone other than in accordance with the Protective Order.

I acknowledge that a violation of this Non-Disclosure Certificate or the Protective Order shall entitle parties to seek both legal and equitable remedies against me and my employer. I submit to the jurisdiction of the United States District Court for the Central District of California, and the judge assigned to the Litigation, for resolution of any and all disputes arising under the Protective Order and this Non-Disclosure Certificate.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Address and Telephone Number